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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FINJAN LLC,

Plaintiff,

V.

PALO ALTO NETWORKS, INC.,

Defendant.

Case No. 3:14-CV-04908-RS

**PALO ALTO NETWORKS’
MOTION AND NOTICE OF
MOTION FOR LEAVE TO SUBMIT
SUPPLEMENTAL CLAIM
CONSTRUCTION AUTHORITY**

Date: Thursday, May 23, 2024
Time: 1:30 p.m.
Dept: Courtroom 3, 17th Floor
Judge: Hon. Richard Seeborg

1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that on Thursday, May 23, 2024 at 1:30 PM, or as soon
4 thereafter as the matter may be heard in the United States District Court for the Northern District
5 of California, San Francisco Division, in Courtroom 3 before the Honorable Richard Seeborg,
6 Defendant Palo Alto Networks, Inc. (“PAN”) will and hereby does move pursuant to Civil Local
7 Rule 7-3(d) to provide supplemental authority for the upcoming claim construction hearing.

8 **RELIEF REQUESTED**

9 PAN seeks leave to submit as supplemental authority deposition testimony pertinent to
10 PAN’s argument that the term “programming language” as used in claims 1, 4, 5, 6, and 22 of
11 U.S. Patent No. 8,225,408 (the “’408 Patent”) is indefinite. PAN’s proposed supplemental
12 authority consists of excerpts of testimony, including two associated exhibits, from the deposition
13 of Dr. Paul Min, Plaintiff Finjan LLC’s (“Finjan”) technical expert for the ’408 Patent.

14 **STATEMENT OF ISSUES**

15 Whether the Court should grant leave for PAN to submit supplemental authority consisting
16 of the testimony and exhibits provided as Exhibits 1-3 to the attached Declaration of Michael
17 DeStefano (“DeStefano Declaration”).

18 **STATEMENT OF RELEVANT FACTS AND**
19 **MEMORANDUM AND POINTS OF AUTHORITIES**

20 PAN submits this Notice of Motion and Motion for leave to submit supplemental authority
21 pursuant to Civil Local Rule 7-3(d). PAN seeks to submit as supplemental authority excerpts of
22 testimony, and two associated exhibits, from the deposition of Dr. Paul Min, Finjan’s technical
23 expert for the ’408 Patent that is relevant to the parties’ dispute regarding the construction of
24 “programming language.” Finjan first identified Dr. Min as an expert on September 12, 2022,
25 nearly one year after claim construction briefing was completed on September 20, 2021. Dr. Min
26 was not available for deposition until the scheduled expert discovery period and PAN completed

1 his deposition on invalidity issues on March 16, 2023¹. Accordingly, Dr. Min was unknown to
 2 PAN and his deposition testimony was unavailable during claim construction briefing in this case.
 3 The excerpts of Dr. Min's testimony, and associated exhibits, that PAN seeks to submit are
 4 referenced below and contained in Exhibits 1-3 to the attached DeStefano Declaration.

5 Dr. Min testified that (1) the '408 Patent did not use "programming language" according to
 6 its plain and ordinary meaning, (2) the inventors of the '408 Patent acted as their own
 7 lexicographers for "programming language," and (3) that "URI" would not be considered a
 8 "programming language" under the "plain and ordinary" meaning of that term but would be
 9 considered a "programming language" according to the definition in the '408 Patent. (*See*
 10 *generally* 3/16/23 Min Dep. Tr. at 60:20-70:23 (DeStefano Ex. 1); Min Deposition Exhibit 36
 11 (DeStefano Ex. 2); Min Deposition Exhibit 36-A (DeStefano Ex. 3).)² For example, Dr. Min
 12 testified as follows:

13 Q: Okay. And do you believe that programming language as used in the '408
 14 Patent has the same definition or has a different definition?

15 A: The programming language, the term used in the '4[0]8 patent, the
 16 inventors have given a – its own lexicographical term that include the other
 17 items that is not - - -

18 Q: Okay.,

19 A: in here."

20 (3/16/23 Min Dep. Tr. at 63:2-7 (DeStefano Ex. 1))

21 Q: What is your understanding of programming language given by the '408
 22 Patent?

23 [objection to form]

24 A: The programming language given by the '408 Patent, general
 25 understanding is the same as what I have written before; but this time, they
 26 – The inventors of the '408 patent specifically include these four as

27 ¹ PAN deposed Dr. Min on March 16, 2023 on the opinions contained in his validity
 28 report, and on March 17, 2023 on the opinions contained in his infringement report.

2 ² Reference to "DeStefano Ex. ____" are to exhibits to the Declaration of Michael DeStefano
 in Support of PAN's Motion for Leave to Submit Supplemental Claim Construction Authority.

1 examples of a – a programming language. There is HTML, URI,
2 Javascript, Visualbasic, VBscript. Those four items [sic] are specific
3 examples of a programming language; and they have a right to use that as a
– their own lexicographical exercise.

4 Q: Because they defined it?

5 A: That's right.

6 (*Id.* at 65:12-66:3)

7 “Q: So then the definition of programming language in the '408 Patent is
8 different than your understanding of programming language before you read
9 the '408 patent, true?

10 * * *

11 A: . . . But, once again, the inventors of the '408 Patent has a right to be their
12 own lexicographic – lexicographer, so they define the URI to be a part of
that programming language, too.

13 Q: You think a patentee can be their . . . own lexicographer?

14 A: In the – in the context of their own patent, yeah. They can define term and
15 use that term as they wish.

16 Q: And you think that the inventors of the '408 Patent were their own
17 lexicographers?

18 A: In defining their own term, yes.”

19 (*Id.* at 67:1-25)

20 Dr. Min confirmed differences between the plain and ordinary meaning of “programming
21 language” and the meaning of “programming language” as used in the '408 Patent on Exhibits 36
22 and 36-A to his deposition. On Exhibit 36, Dr. Min wrote down his understanding of the plain and
23 ordinary meaning of “programming language” and confirmed that it would not include URI (not
24 circled). (*See* DeStefano Ex. 2.) On Exhibit 36-A, Dr. Min wrote down his understanding of the
25 meaning of “programming language: as used in the '408 Patent and confirmed that it did include
26 URI (circled). (*See* DeStefano Ex. 3.) Excerpts from Exhibits 36 and 36-A are set forth below:

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1	Uniform Resource Identifier (URI)	<u>Python</u>	Uniform Resource Identifier (URI)	<u>Python</u>
2	<u>Def: Programming language</u> syntax of key words/phrases used to make binary executable code for the machine in a specific manners. (Paul Min on-the-fly definition)			Def: Programming language given by the 408 Patent, which specifically includes HTML, URI, Javascripts, Visual Basic VB script.
6	Exhibit 36 (excerpt, blue ink written by Dr. Min) [plain and ordinary meaning]			Exhibit 36-A (excerpt, blue ink written by Dr. Min) ['408 Patent meaning]

9 (See also 3/16/23 Min Dep. Tr. at 61:20-2, 62:25-64:7, 65:3-66:3, 66:19-23, 67:13-68:11)

10 PAN submits that Dr. Min's testimony is relevant to the construction of "programming
 11 language" because it supports PAN's position and contradicts Finjan's position. PAN therefore
 12 respectfully requests leave pursuant to Civil Local Rule 7-3(d) to submit Exhibits 1-3 to the
 13 DeStefano Declaration as supplemental support for PAN's proposed construction of the term
 14 "programming language."

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1 DATED: April 17, 2024

2 /s/Kyle W.K. Mooney
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28 Attorneys for Defendant
PALO ALTO NETWORKS, INC.

1 **ATTESTATION PURSUANT TO CIVIL L.R. 5-1(i)**

2 In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this
3 document has been obtained from any other signatory to this document.

4 _____
5 */s/Kyle W.K. Mooney*
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